

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5802

Dan K. Webb (*pro hac vice*)  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, IL 60601  
Telephone: (312) 558-5600  
Facsimile: (312) 558-5700  
[dwebb@winston.com](mailto:dwebb@winston.com)

Patrick M. Ryan (SBN: 203215)  
WINSTON & STRAWN LLP  
101 California Street  
San Francisco, CA 94111-5894  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
[pryan@winston.com](mailto:pryan@winston.com)

Attorneys for Defendant and Counterclaimant  
CISCO SYSTEMS, INC. and Counterclaimant  
CISCO TECHNOLOGY, INC.

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

MULTIVEN, INC., a Delaware corporation

Plaintiff,

v.

CISCO SYSTEMS, INC., a California  
corporation

Defendant.

CISCO SYSTEMS, INC., a California  
corporation, and CISCO TECHNOLOGY,  
INC., a California corporation

Counterclaimants,

v.

MULTIVEN, INC., a Delaware corporation,  
PINGSTA, INC., a Delaware corporation, and  
PETER ALFRED-ADEKEYE, an individual

Counterdefendants.

**Case No. 5:08-cv-05391-JW-RS**

**DECLARATION OF PATRICK M. RYAN  
IN SUPPORT OF CISCO'S OPPOSITION  
TO THE MOTION BY MULTIVEN, INC.,  
PINGSTA, INC., PETER ALFRED-  
ADEKEYE, AND DEKA YUSSUF TO  
QUASH OR MODIFY SUBPOENAS AND  
FOR PROTECTIVE ORDER.**

1 I, Patrick M. Ryan, declare as follows:

2 1. I am a member in good standing of the State Bar of California and a Partner with  
3 Winston & Strawn LLP, attorneys for Defendant and Counterclaimant Cisco Systems, Inc. and  
4 Counterclaimant Cisco Technology, Inc. in the above-entitled action. I have personal knowledge of  
5 the facts set forth herein, except where noted, and, if called to testify, could and would competently  
6 testify thereto.

7 2. On February 12, 2010, I visited the California Secretary of State website and looked up  
8 the business entities Multiven, Inc. and Pingsta, Inc. Mr. Adekeye is listed as the agent for service  
9 of process for both Multiven, Inc. and Pingsta, Inc. According to the website, Multiven, through Mr.  
10 Adekeye, can be served at 1700 Seaport Boulevard, Suite 110, Redwood City, California, 94063.  
11 Attached hereto as Exhibit "A" are true and correct copies of the California Secretary of State  
12 Business Entity Detail for Multiven, Inc. and Pingsta, Inc. listing Mr. Adekeye as the agent for  
13 service of process.

14 3. On January 26, 2010, four days after putting the parties on notice that I was going  
15 notice the depositions of Multiven's 30(b)(6) witness and Mr. Adekeye (as an officer of Multiven  
16 and Pingsta and as an individual defendant) and Ms. Yussuf (as Multiven and Pingsta's Vice  
17 President) for an agreed-upon week in March 2010, I caused to be personally served via a messenger  
18 service six deposition notices and subpoenas all with March deposition dates. Attached hereto as  
19 Exhibit "B" are true and correct copies of the proofs of service.

20 4. According to Multiven's initial disclosures, Ms. Yussuf, Multiven's Executive Vice  
21 President Business Development, is one of six people — along with her husband Mr. Adekeye —  
22 who has "knowledge concerning the nature of Multiven's business and service offerings; Cisco's  
23 business practices; the conditions on the availability of Cisco networking equipment operating  
24 system software updates/bug fixes and Multiven lost business opportunities/customers". Attached  
25 hereto as Exhibit "C" is a true and correct copy of Multiven's initial disclosures dated June 19, 2009.

26 5. On November 13, 2009, I contacted Mr. Adekeye's counsel to set up a mutually  
27 convenient date for Mr. Adekeye's deposition. I sent this request by e-mail and U.S. mail and  
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1 requested counsel provide available dates prior to November 30. Attached hereto as Exhibit “D” is a  
2 true and correct copy of this November 13, 2009 letter.

3 6. On November 17, 2009, Mr. Pepperman responded on behalf of Mr. Adekeye. He did  
4 not mention that Mr. Adekeye could not enter the United States nor that Ms. Yussuf had the same  
5 limitation. Rather, he asked for additional information before he could meet-and-confer about  
6 scheduling the deposition and stated that in any event, it was “unlikely that Mr. Adekeye can appear  
7 for deposition before the end of November” due to the “Thanksgiving holiday and other  
8 commitments.” Attached hereto as Exhibit “E” is a true and correct copy of this November 17, 2009  
9 letter.

10 7. On November 17, 2009, I immediately sought to accommodate the Thanksgiving  
11 holiday and other commitments by proposing five dates after Thanksgiving for Mr. Adekeye’s  
12 deposition: November 30, December 1, December 3, December 4 and December 7. Attached hereto  
13 as Exhibit “F” is a true and correct copy of this November 17, 2009 letter.

14 8. Subsequently, on November 17, 2009, Mr. Pepperman responded by accusing Cisco of  
15 “neglect[ing] . . . to request that counsel for the parties participate in . . . a consultation as required  
16 by Local Rule 30-1” and demanding that the parties meet-and-confer by telephone. Attached hereto  
17 as Exhibit “G” is a true and correct copy of this November 17, 2009 letter.

18 9. That same day, on November 17, 2009, the parties participated in a telephonic meet-  
19 and-confer. On that call, Mr. Pepperman announced for the first time that Mr. Adekeye was out of  
20 the country on business and was unwilling to return for a deposition on the requested date.  
21 Mr. Pepperman said nothing about the possibility that Mr. Adekeye may not be able to reenter the  
22 United States due to potential problems with his visa. Mr. Pepperman made the following  
23 alternative proposals: (1) he would produce Mr. Adekeye for deposition in London, England on  
24 December 10 or December 11, but Cisco would have to pay all of its own costs for travel and for the  
25 foreign deposition; (2) he would produce Mr. Adekeye for a video deposition, but he recommended  
26 against a video tape deposition because he said that Mr. Adekeye has a strong accent and is very  
27 difficult to understand over the telephone; or (3) he would produce Mr. Adekeye for deposition in  
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1 San Francisco no earlier than late January 2010.

2 10. By letter dated November 18, 2009, I explained at length why these proposals were  
3 unacceptable and noticed Mr. Adekeye's deposition for December 11, 2009 in San Francisco,  
4 California. Per standing agreement between the parties, I served the deposition notice both by e-  
5 mail and by U.S. mail. Attached hereto as Exhibit "H" is a true and correct copy of this November  
6 18, 2009 letter and the notice of deposition of Plaintiff and Counterdefendant Peter Alfred-Adekeye.

7 11. On November 19, 2009, Mr. Pepperman responded to Cisco's deposition notice by  
8 letter. For the first time, he informed me that Mr. Adekeye allegedly cannot enter the United States  
9 due to visa problems and therefore, he cannot produce Mr. Adekeye for deposition in San Francisco.  
10 Specifically, he explained that although Mr. Adekeye "is a citizen of the United Kingdom,"  
11 "Mr. Adekeye does not currently have a visa that would permit his attendance at a deposition in San  
12 Francisco." To that end, Mr. Pepperman proposed deferring the deposition until January or February  
13 2010 in order to allow Mr. Adekeye sufficient time to obtain a visa. Attached hereto as Exhibit "I"  
14 is a true and correct copy of this November 19, 2009 letter.

15 12. On November 24, 2009, I responded to Mr. Pepperman's letter by asking ten questions  
16 as follows: (1) What is the first date by which you can guarantee that Mr. Adekeye will be available  
17 for deposition in the San Francisco Bay Area? (2) Why can't Mr. Adekeye obtain a visa to travel to  
18 the United States sooner than January/February 2010? (3) What efforts has Mr. Adekeye taken to  
19 obtain a visa to travel to the United States by December 11, 2009, the date noticed for his  
20 deposition? (4) Was Mr. Adekeye residing outside of the United States on the date that Multiven  
21 filed the initial complaint in this action? (5) When did Mr. Adekeye's legal right to reside in the  
22 United States expire? (6) When was the last date Mr. Adekeye was physically present in the United  
23 States? (7) Are you willing to advance Cisco's counsel \$50,000 in expenses for taking  
24 Mr. Adekeye's deposition in London, England, subject to refund should the costs be less? (8) Do  
25 you guarantee that Mr. Adekeye will physically appear at the trial in this action? (9) When will you  
26 be producing responsive documents? (10) Will you produce all responsive documents prior to his  
27 deposition? Attached hereto as Exhibit "J" is a true and correct copy of this November 24, 2009

1 letter.

2 13. Also on November 24, 2009, Mr. Pepperman responded by assuring me that “once  
3 Mr. Adekeye obtains the requisite visa, he will be made available for deposition at your office in San  
4 Francisco,” and estimated that Mr. Adekeye would be able to obtain a visa by “late-January or early-  
5 February.” As to the Ten Questions, Mr. Pepperman promised that answers would be forthcoming.  
6 Attached hereto as Exhibit “K” is a true and correct copy of this November 24, 2009 letter.

7 14. On November 30, 2009, I offered to move Mr. Adekeye’s deposition to early-February  
8 as long as Mr. Pepperman provided me with a copy of Mr. Adekeye’s visa application to confirm  
9 that the process for obtaining a visa had been initiated and asked Mr. Pepperman to tell me when  
10 Mr. Adekeye’s visa interview was scheduled. Assuming that the parties could reach an agreement  
11 (especially because Mr. Pepperman promised to produce Mr. Adekeye in San Francisco and  
12 estimated that he could do so by February), I let Mr. Pepperman know that I had blocked out the first  
13 five days of February to accommodate Mr. Adekeye’s schedule and stated “the only thing left to do  
14 is select a date.” Attached hereto as Exhibit “L” is a true and correct copy of this November 30,  
15 2009 letter.

16 15. On December 1, 2009, in response to my November 30 letter, Mr. Pepperman’s  
17 colleague, Mr. Kim, forwarded a document to me captioned “Declaration of Hilla R. Nattiv in  
18 Support of Counterdefendant Peter Alfred-Adekeye’s Motion for Protective Order Continuing his  
19 Deposition.” The declaration is attached to Mr. Kim’s declaration and can be found at Docket Entry  
20 129-3.

21 16. Later that day, after Mr. Pepperman sent me Ms. Nattiv’s declaration, the parties met  
22 and conferred by telephone. On December 2, 2009, I agreed to take the December 11, 2009  
23 deposition off calendar to see if the issue with Mr. Adekeye’s visa and the deposition dispute  
24 surrounding it could be resolved, so that Mr. Adekeye’s deposition could proceed in this District  
25 some time in February or March. Attached hereto as Exhibit “M” is a true and correct copy of the  
26 December 1–2, 2009 email exchange.

27 17. During this telephonic meet-and-confer, though I had specifically asked about the date  
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1 of Mr. Adekeye's visa interview, Mr. Pepperman did not tell me that four days earlier, Mr. Adekeye  
2 had "attend[ed] a visa interview on Friday, November 27, 2009," and learned that his visa request  
3 "was denied based upon [his] pending appeal." At no point during this meet-and-confer telephone  
4 call did Mr. Pepperman repudiate his previous assertion that Mr. Adekeye would be made available  
5 for deposition within 60-90 days. Further, at that time, Mr. Pepperman failed to inform me that  
6 Ms. Yussuf was facing the same visa challenges.

7 18. On December 3, 2009, Mr. Pepperman sent a letter to me reneging on his agreement to  
8 answer the Ten Questions because he believed the issues were addressed in the "meet-and-confer  
9 session on December 1, 2009 and the Declaration provided to you from Mr. Adekeye's immigration  
10 attorney." Between the meet-and-confer session and the Nattiv declaration, Mr. Pepperman  
11 informed me that Mr. Adekeye could not attend a deposition in the United States until February  
12 2010 because his visa had been revoked, a decision he was currently in the process of appealing.  
13 Mr. Pepperman also stated that his client was unwilling to advance Cisco \$50,000 in expenses for  
14 taking Mr. Adekeye's deposition in London. Attached hereto as Exhibit "N" is a true and correct  
15 copy of this December 3, 2009 letter.

16 19. Seven of the Ten Questions remained unanswered, as I explained to Mr. Pepperman that  
17 same day. Attached hereto as Exhibit "O" is a true and correct copy of this December 3, 2009 letter.

18 20. I first noticed the deposition of Ms. Yussuf on December 29, 2009.

19 21. On January 5, 2010, Mr. O'Leary wrote a letter complaining that the deposition notice  
20 for Ms. Yussuf was improper because I failed to meet-and-confer with him as required under Local  
21 Rule 30-1, a rule that applies only to party witnesses. He informed me for the first time that  
22 Ms. Yussuf is also barred from entering the United States. Mr. O'Leary offered to make Ms. Yussuf  
23 available for deposition in Geneva, Switzerland, but he refused to pay for any expenses incurred by  
24 my travel to Switzerland. The only other option he offered was to "wait until the State Department  
25 issues Ms. Yussuf a visa" and depose her in the United States. Attached hereto as Exhibit "P" is a  
26 true and correct copy of this January 5, 2010 letter.

27 22. On January 5, 2010, I temporarily withdrew Ms. Yussuf's deposition notice and  
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1 apologized for not having met and conferred regarding the date as is required by local rules when the  
2 deponent is the officer of a party. Attached hereto as Exhibit “Q” is a true and correct copy of this  
3 January 5, 2010 letter.

4 23. On January 22, 2010, the parties met and conferred about various discovery-related  
5 issues. One of the issues discussed was Multiven’s request for an extension to respond to written  
6 discovery about its antitrust claims because it was “plaintiff’s view that all motion practice and  
7 discovery should be temporarily stayed until after Judge Ware rules on the pending [disqualification]  
8 motion.” Another issue discussed was my intent to re-notice the depositions of Mr. Adekeye and  
9 Ms. Yussuf and my intention to notice Plaintiff and Counterdefendants’ 30(b)(6) depositions. As  
10 explained in advance of the call, I acknowledged that the Moving Parties’ “position is that you are  
11 refusing to produce them in the United States and will not pay our costs to travel to Europe for their  
12 deposition. We, however, intend to renote [Mr. Adekeye and Ms. Yussuf’s] depositions so we can  
13 take this issue up with the Court.” Therefore, I asked for “available dates for the depositions of Mr.  
14 Adekeye and Ms. Yussuf in March”. During the meet-and-confer, all parties agreed that we would  
15 proceed in this way — I would notice the 30(b)(6) depositions and the Adekeye and Yussuf  
16 depositions for the week of March 22 to give Counterdefendants ample opportunity to move for a  
17 protective order without also having to move to shorten time. Attached hereto as Exhibits “R-1”  
18 “R-2” and “R-3” are true and correct copies of this email exchange.

19 24. On January 26, 2010, I caused to be personally served via a messenger six deposition  
20 notices and the six deposition subpoenas that are the subject of this motion.

21 25. As agreed by the parties, I noticed Mr. Adekeye’s deposition and Ms. Yussuf’s  
22 deposition and the 30(b)(6) depositions for the week of March 22 and provided Multiven’s counsel  
23 with four checks, two in the amount of \$55 for witness fees and two in the amount of \$2,440 for air  
24 travel from Switzerland to San Francisco for Multiven’s President and Vice President, Mr. Adekeye  
25 and Ms. Yussuf. Attached hereto as Exhibit “S” are true and correct copies of the six depositions  
26 and the six deposition subpoenas with the corresponding checks.

27 26. I noticed the custodian of records for Multiven and Pingsta for the week prior to March  
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22 so that we would have the documents by the time the substantive depositions of Mr. Adekeye, Ms. Yussuf, Multiven's 30(b)(6) witness, and Pingsta's 30(b)(6) witness were to take place.

27. On February 9, 2010, two weeks after I had the subpoenas hand-served on Ropers, Majeski, Kohn & Bentley and Blecher & Collins, Mr. Pepperman returned the ones served on him to me along with the checks, claiming that "Blecher & Collins is not authorized to accept service of these subpoenas." Attached hereto as Exhibit "T" is a true and correct copy of this February 9, 2010 letter.

28. On February 9, 2010, Mr. Pepperman also served objections to the subpoenas. He objected to the subpoenas to Mr. Adekeye and Ms. Yussuf because: (1) Mr. Adekeye and Ms. Yussuf were not personally served; (2) the subpoenas subjected Mr. Adekeye and Ms. Yussuf to undue burden and expense; (3) the subpoenas failed to allow Mr. Adekeye and Ms. Yussuf a reasonable amount of time to comply; and (4) the subpoenas required Mr. Adekeye and Ms. Yussuf to travel more than 100 miles from his or her residence to attend the deposition. Attached hereto as Exhibit "U" is a true and correct copy of the objections to the subpoenas.

29. On February 9, 2010, Mr. Pepperman also objected to the Rule 30(b)(6) deposition notices served on Multiven and Pingsta because: (1) the subpoenas were not properly served, (2) the subpoenas subjected the 30(b)(6) witness to undue burden and expense, (3) the subpoenas failed to allow a reasonable amount of time to comply, and (4) the subpoenas required the non-party to travel more than 100 miles from its residence. Attached hereto as Exhibit "V" is a true and correct copy of the objections to the subpoenas.

30. On February 9, 2010, Mr. Pepperman also objected to the custodian-of-record subpoenas because: (1) the subpoenas were abusively drawn for harassment purposes, (2) the subpoenas were not properly served, (3) the subpoenas subjected the witness to undue burden and expense, (4) the subpoenas failed to allow a reasonable amount of time to comply, and (5) the subpoenas required the non-party to travel more than 100 miles from its residence to be deposed. Attached hereto as Exhibit "W" is a true and correct copy of the objections to the subpoenas.

31. To determine the difference between what a deposition in Geneva would cost,



1 compared to what a deposition in San Francisco would cost, my office recently confirmed with  
 2 Merrill Legal Solutions, a global court reporting firm, the cost estimate for court reporting and  
 3 related services for a 4-day, videotaped deposition in San Francisco, California and the same in  
 4 Geneva, Switzerland. Attached as Exhibit "X" hereto is the e-mail exchange between my office and  
 5 an Account Executive at Merrill Legal Solutions regarding these cost estimates. The cost estimates  
 6 contained in this declaration are derived directly from the rates provided by Merrill Legal Solutions,  
 7 as reflected in Exhibit X, and do not include costs for time or travel by attorneys or case assistants.

8 32. The estimated cost for court reporting and related services by Merrill Legal Solutions  
 9 for a video-taped deposition in San Francisco, California lasting 4 days is \$11,180. This estimated  
 10 cost is derived as follows:

11 a. Non-Expedited Transcript, Video Services, and Real-Time Access

- 12 i. Transcript Charges - \$3,720: \$4.65 per page, 200 pages per day, 4 days
- 13 ii. Real-time Access - \$2,600: 200 pages per day, 4 days, 1 local connection and
- 14 1 remote connection
- 15 iii. Video Services - \$4,300: \$305 first hour, \$110 each additional hour, 8 hours
- 16 per day, 4 days
- 17 iv. Videotapes - \$560: 4 days

18 33. The estimated cost for court reporting and related services by Merrill Legal Solutions  
 19 for a video-taped deposition in Geneva, Switzerland lasting 4 days is \$27,377.71. This estimated  
 20 cost is derived as follows:

21 a. Non-Expedited Transcript, Attendance, and Real-Time Access

- 22 i. Transcript Charges - \$5,720: \$7.15 per page, 200 pages per day, 4 days
- 23 ii. Real-time Access - \$3,520: \$4.40 per page (includes \$1.65 per page for local
- 24 connection and \$2.75 per page for one remote connection), 200 pages per day,
- 25 4 days
- 26 iii. Attendance – \$6,580: \$195 per day for court reporter, \$1,450 per day for
- 27 videographer, 4 days

iv. Videotapes - \$736: \$184 per day, 4 days

b. Travel Time and Expenses

i. Airfare - \$3,000: \$1,500 per roundtrip flight from San Francisco to Geneva, airfare for court reporter and videographer only

ii. Accommodations - \$3,500: \$350 per night, 5 nights, accommodations for court reporter and videographer only

iii. Subsistence - \$950: \$95 per night, 5 days, subsistence for court reporter and videographer only

iv. Excess Baggage, Sundries and Taxis - \$1,500: \$500 for excess baggage for video equipment, \$1,000 for taxis and sundries in Geneva, Switzerland

v. Travel Time - \$1,871.71: \$535.85 per day for court reporter, \$400 per day for videographer, 2 days for round-trip travel

34. As illustrated above, holding the depositions in Geneva will cost \$16,197.71 more than holding them in San Francisco.

35. Taking into account costs for travel time (assuming a 2 hour pre-departure airport arrival time and a 1 hour post-arrival travel duration) and air time (assuming a 9.5 hour international flight) for 2 attorneys who charge an average billing rate of \$450 per hour, it will take a total of 25 hours to fly from San Francisco to Geneva and back (12.5 hours each way), which will cost \$22,500 in fees.

36. Taking into account accommodations for 2 attorneys for 4 days and 5 nights, at a hotel that charges \$350 per night (the same rate used to assess the accommodation costs for a videographer and court reporter), this will cost \$3,500.

37. Taking into account meal costs for 2 attorneys for 7 days (assuming 2 travel days and 5 days spent taking the depositions in Geneva), with a daily food allowance of \$95 (the same rate used to assess the subsistence costs for a videographer and court reporter), this expense is \$1,330.

38. As stated above, holding the depositions in Geneva will cost \$16,197.71 more than holding them in San Francisco. Not including the cost of flights, the cost associated with travel time

1 for 2 attorneys to fly to Geneva and back is \$22,500. The cost of 5 nights of accommodations for 2  
2 attorneys is \$3,500. Lastly, the subsistence cost for 7 days for 2 attorneys is \$1,330. Thus, a foreign  
3 deposition in Geneva, Switzerland will cost a grand total of \$43,527.71.

4 I declare under penalty of perjury under the laws of the United States that the foregoing is  
5 true and correct.

6 Executed February 23, 2010.

7 /s/ Patrick M. Ryan

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San Francisco, CA 94111-5802